

local rates for ESPs—it has shown no basis for imposing such discrimination on rates in this proceeding. US WEST has not shown that separating this traffic is required under the law or that it is technically feasible.

The Commission will adopt the proposed language of MFS at page 12 of the Joint Position Statement.

B. Late Payment Charges for Untimely Transmission of Switched Access Data

1. The Issue

MFS relies on US WEST to provide switched access data so that MFS may implement its billing of IXCs. MFS proposes certain performance standards and monetary incentives to ensure that US WEST's provision of the data is timely and correct. Under MFS's proposal, if US WEST does not transmit switched access detail usage data or switched access summary usage data within 90 days and in the appropriate format, and the delay results in a delay in MFS's IXC billing, MFS may bill US WEST late payment charges at the rate of 0.000493 per day. If the switched access data is not submitted in the proper format within another 90 days of the original due date, billings for the associated traffic will be deemed "lost" and US WEST will be liable to MFS for the amount of the lost billings.

US WEST argues that it does not currently have such arrangements with independent LECs which receive switched access data from US WEST. According to US WEST, this shows that such penalties are not necessary or appropriate.

2. Commission Decision

The Commission agrees with MFS that its proposed contract language is a reasonable means of ensuring US WEST's timely and correct provision of data essential to MFS's entry into the local telephone market. The lengthy time frames are commercially reasonable methods of protecting MFS from monetary losses from late or incomplete billing. US WEST has not demonstrated why it would not be able to comply with the time periods included in the MFS proposal. The Commission also notes that it has approved performance and quality standards for AT&T and MCI Metro in this Order.

For these reasons, the Commission will adopt the language proposed by MFS at page 17 of the Joint Position Statement.

C. Separate Trunk Groups for Non-US WEST Local Traffic

1. The Issue

US WEST requests that MFS be required to establish separate trunks for local calls going to US WEST and non-US WEST end users. US WEST states that it is technically unable to determine the company serving the destination telephone number. Separate trunks are necessary so that US WEST can bill tandem switching and end office termination charges for those calls going to US WEST end users and only the tandem switching charge for calls going to non-US WEST end users.

15

PUBLIC UTILITY COMMISSION

Solicitation of Public Comment on the Investigation of Local Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers Docket No. P-00981404

On August 27, 1998 the Commission approved a motion in Docket No. P-00981404 which opened a generic investigation into the question of whether Internet traffic and Internet calls in Pennsylvania are local. The motion responded to a petition filed by Bell Atlantic--Pennsylvania, Inc. (Bell), which asked the Commission to open an generic investigation of competitive local exchange carrier (CLEC) issuance of local numbers to Internet Service Providers (ISPs).

In its petition, Bell disputed the practice of assigning local telephone numbers to ISPs claiming that such calls are not actually handed to the ISP within the same local calling area where the calls originate. Bell stated that this requires it to carry such calls outside the local calling area. Bell contended that this allows the CLEC to falsely bill Bell for reciprocal compensation that only applies to local calls.

Through approval of the motion, the Commission has agreed to open an inquiry as Bell requested and to expand the inquiry to include fundamental question as to whether Internet traffic and Internet calls are local as a matter of policy in the Commonwealth.

The Commission is inviting public comment on the issues set forth above. The deadline for filing initial comments is September 22, 1998. Reply comments may be filed no later than September 28, 1998. Anyone submitting comments or reply comments must file an original and four (4) copies with the Commission's Secretary for filing at Docket No. P-00981404. Any person submitting Comments or Reply Comments should also file a diskette containing an electronic read-only version of their comments in Microsoft Word 6 format clearly identifying the party, docket number, nature of filing, and contact person.

The contact person at the Commission regarding this proceeding is Louise Fink Smith, Office of Special Assistants (717) 787-1827. A copy of the August 27, 1998 motion as well as the subsequent Commission order memorializing the motion may be obtained from Lisa Higley in the Office of the Secretary at (717) 787-1013.

By the Commission,

James J. McNulty,
Secretary

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**INVESTIGATION OF ISSUANCE OF
LOCAL TELEPHONE NUMBERS TO
INTERNET SERVICE PROVIDERS BY
COMPETITIVE LOCAL EXCHANGE CARRIERS**

**PUBLIC MEETING
AUGUST 27, 1998
AUG-98-C-10*
DOCKET NO. P-00981404**

MOTION OF COMMISSIONER AARON WILSON, JR.

The Commission entered an Order on June 16, 1998 in Docket No. P-00971256 that resolved a dispute between Bell Atlantic Pennsylvania, Inc. (Bell) and TCG Delaware Valley (TCG). The Commission decided that Internet calls between Bell and TCG, Inc. were local calls under Section 5.7.2 of their interconnection agreement. Bell was given the option of initiating an investigation of Internet calling within Pennsylvania.

On June 26, 1998, Bell requested a generic investigation of the issuance of phony "local" number to Internet Service Providers (ISPs) by competitive local exchange carriers (CLECs). Bell claims investigation is necessary because it consumes scarce numbering resources, deprives Bell of compensation, and discourages network deployment. Bell reserves the right to contest the Commission's determination that ISP calls are local calls in an appropriate proceeding. The opposition disputes Bell's position.

Since Bell's request and the submission of opposition pleadings, the Commission approved other interconnection agreements that are silent on the jurisdictional handling of Internet calls within Pennsylvania. The Commission recognizes that the June Order, the limited nature of Bell's request in this Petition, and subsequent developments cause uncertainty over Pennsylvania's treatment of Internet calls in Pennsylvania.

Consequently, we must answer the fundamental question of whether Internet traffic and Internet calls in Pennsylvania are local calls as a matter of public policy in the current situation. Other states and the federal government recognized the importance of this fundamental policy question. The Pennsylvania PUC must resolve this fundamental policy question or risk placing Pennsylvania in the break-down lane on the information superhighway.

I think Bell's Petition for a generic investigation of local number assignment to ISPs does not go far enough. I believe Bell's request must be expanded to include the following fundamental question:

Are Internet Traffic and Calls local as a matter of policy in Pennsylvania?

This is a matter of grave policy concern in Pennsylvania. For one thing, if Internet Traffic and Calls are NOT considered local, consumer, students, and educators may wind up paying per minute of use charges for Internet access. On the other hand, if Internet traffic and calls ARE considered local, consumers, students, and educators can access the information superhighway on a basis other than by per minute of use charges on the Internet. Finally, I recognize that disposition of this policy question will impact interconnection agreements, including compensation arrangements, under state and federal law in Pennsylvania.

Therefore, other interested parties should be encouraged to assist the Pennsylvania PUC in resolving this fundamental policy question.

I also want to encourage broader public participation and education on this question. I believe that a public notice should be published in the *Pennsylvania Bulletin* and posted on the Commission's website setting forth the necessary information to educate the public on this fundamental policy question.

This question can be answered quickly by incorporating, and building on, the information contained in this docket, Docket No. P-00971256, and the following timetable:

1. September 1998: Public Notice, Education, and Comment Solicitation
2. October 1998: OALJ proceedings.
3. November 2, 1998: Issuance of a Recommended Decision.
4. November 10, 1998: Deadline for filing Exceptions.
5. November 17, 1998: Deadline for filing Reply Exceptions.
6. November 25, 1998: Submission of a Joint Recommendation by OSA, Law Bureau, and FUS.

THEREFORE, I MOVE THAT:

1. The generic Petition of Bell be granted and expanded to include the fundamental question of whether Internet traffic and Internet calls are local in Pennsylvania;
2. That the Office of Administrative Law Judge provide the notice and conduct the proceedings necessary to issuing a Recommended Decision on this generic question no later than November 2, 1998;
3. That November 10, 1998 and November 17, 1998 be the established deadlines for filing Exceptions and Reply Exceptions, respectively, to the Recommended Decision;
4. That a Joint Recommendation be submitted by OSA, Law Bureau, and FUS for the Commission's consideration no later than November 25, 1998.
5. That the Law Bureau place notice advising the public and interested parties of this generic investigation in the *Pennsylvania Bulletin* and that the Secretary ensure posting at the Commission's website of this generic investigation.
6. That the Bell Petition be granted consistent with this Opinion and Order.
7. That OSA prepare an Opinion and Order, consistent with this Motion, for entry no later than September 2, 1998.

Date

Dr. Aaron Wilson, Jr.

(15)

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 27, 1998

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

Investigation of Issuance of Local Telephone Numbers to
Internet Service Providers by Competitive Local Exchange
Carriers

P-00981404

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration is the Petition of Bell Atlantic-PA, Inc., (BA-PA) for Generic Proceeding to Investigate Issuance of "Local" Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers (Petition), filed on June 26, 1998.

History of the Proceeding

On June 16, 1998, in *Petition for Declaratory Order of TCG Delaware Valley, Inc., for Clarification of Section 5.7.2 of its Interconnection Agreement with Bell Atlantic-PA, Inc.*, Docket No. P-00971256, (TCG), this Commission entered an Order that resolved a contractual dispute between BA-PA, the incumbent local exchange carrier (ILEC), and TCG Delaware Valley (TCG), the competitive local exchange carrier (CLEC). The Commission decided that locally dialed calls to Internet Service Providers (ISPs) were local calls under Section 5.7.2 of the subject Interconnection Agreement between BA-PA

and TCG. BA-PA was, however, given the option of requesting that the Commission initiate a generic investigation of Internet calling within Pennsylvania.

On June 26, 1998, BA-PA filed the instant Petition, requesting a generic investigation of the issuance of allegedly “phony ‘local’” numbers to ISPs by CLECs. BA-PA disputes the practice of assigning local telephone numbers to non-local ISPs because such calls are not “handed to the ISP within the same local calling area where the calls originate.” BA-PA claims that this requires BA-PA to “carry that call outside the local calling area.” (Petition, p. 2.) In Bell’s words, this allows the CLEC to “falsely bill[] BA-PA for reciprocal compensation that only applies to local calls.” (Petition, p. 3.)

On July 16, 1998, TCG filed an Answer to BA-PA’s Petition, arguing that BA-PA’s Petition is baseless and should be dismissed. Additional entities have requested intervention or to be added to the service list.

Discussion

In our June 16, 1998 *TCG* Order, we concluded “that the issue of whether end-user traffic to an ISP is jurisdictionally interstate or intrastate is not material to our authority over interconnection agreements.” (*TCG*, p. 20.) We further stated that “[b]ased on the application of contract principles to this [BA-PA/TCG] controversy, we agree with TCG that according to the plain and ordinary meaning of the words, the traffic from end-users to ISPs is local and subject to reciprocal compensation arrangements” as those terms are used in the subject Interconnection Agreement. (*TCG*, pp. 21-22.)

In its Petition, BA-PA claims that an investigation is now necessary because the disputed practice (1) deprives BA-PA of compensation for originating toll calls, (2) consumes scarce numbering resources, and (3) discourages network deployment.

BA-PA reserves the right to contest the determination that ISP calls are local calls in an appropriate forum. (Petition, Note 1.)

We recognize that the June 16, 1998 *TCG Order*, the limited nature of BA-PA's request in the instant Petition, and the subsequent developments cause uncertainty over Pennsylvania's treatment of Internet calls. Consequently, we must answer the fundamental question of whether Internet traffic and Internet calls in Pennsylvania are local calls as a matter of public policy in the current situation. Other states and the federal government recognized the importance of this fundamental policy question.¹

We believe, however, that BA-PA's Petition for a generic investigation of local number assignment to ISPs does not go far enough. In our opinion, BA-PA's request must be expanded to include the following fundamental question:

Are Internet traffic and calls local as a matter of policy in Pennsylvania?

This is a matter of grave policy concern in Pennsylvania. This Commission must resolve this fundamental policy question or risk placing Pennsylvania in the break-down lane on the information superhighway. For one thing, if Internet traffic and calls are **not** considered local, consumers, students, and educators may wind up paying per-minute-of-use charges for Internet access. On the other hand, if Internet traffic and calls **are**

¹ Additionally, Arizona, Colorado, Connecticut, Florida, Illinois, Maryland, Michigan, Minnesota, Missouri, New York, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin have addressed the nature of Internet calls. On July 1, 1998, Bell Atlantic, the corporate parent of BA-PA, submitted correspondence to the Federal Communications Commission (FCC) stating that Internet calls are not local. The FCC is also considering GTE Corp.'s Tariff No. 1, Transmittal No. 1148, in which Internet calls would be interstate in nature if access is provided using GTE's Asymmetric Digital Subscriber Line (ASDL). The National Association of Regulatory Commissioners (NARUC) has also passed a resolution advocating that such ISP traffic continue to be treated as a matter subject to State jurisdiction in interconnection agreements or tariffs between ILECs and CLECs.

considered local, consumers, students, and educators can access the information superhighway on a basis other than by per-minute-of-use charges on the Internet.

Finally, we recognize that disposition of this policy question has the potential to impact existing and future interconnection agreements, including compensation arrangements, under state and federal law in Pennsylvania. Therefore, other interested parties should be encouraged to assist this Commission in resolving this fundamental policy question. We also want to encourage broader public participation and education on this question. Accordingly, we shall direct that public notice be published in the *Pennsylvania Bulletin* and posted on this Commission's website setting forth the necessary information to educate the public on this fundamental policy question and to solicit comments.

The questions in this investigation can be answered quickly by incorporating, and building upon, the information contained in this docket, as well as the *TCG* proceeding at Docket No. P-00971256. Accordingly, we shall take official notice of the record in the *TGC* proceeding at Docket No. P-00971256 and incorporate that record into this proceeding.

Further, we shall establish the following timetable in this investigation:

September 1998: Public Notice, Education, and Comment Solicitation²

October 1998: Office of Administrative Law Judge proceedings

November 2, 1998: Issuance of a Recommended Decision

² Any Comments and Reply Comments must be filed with the Commission's Office of the Secretary by 4:30 PM on the respective due day, as specified in the notice in the *Pennsylvania Bulletin*. The provisions of Section §1.11, (52 Pa. Code §1.11), relating to date of filing, shall not enlarge the time for filing the Comments or Reply Comments in this proceeding. The Comments and Reply Comments shall be filed in hard copy and electronic copy in Microsoft Word® 6.0 format.

November 10, 1998: Deadline for filing Exceptions.³

November 17, 1998: Deadline for filing Reply Exceptions

November 25, 1998: Submission of a Joint Recommendation for Commission review by the Commission's Office of Special Assistants, the Law Bureau, and the Bureau of Fixed Utility Services

Conclusion

The Commission recognizes that access to the Internet is an issue critical to education, commerce, and other areas vital to the well-being of the Commonwealth. With that in mind, we must resolve this fundamental policy question; **THEREFORE,**

IT IS ORDERED:

1. That the Petition of Bell Atlantic-PA, Inc., for Generic Proceeding to Investigate Issuance of "Local" Telephone Numbers to Internet Service Providers by Competitive Local Exchange Carriers (Petition), filed on June 26, 1998, be granted and expanded to include the fundamental question of whether Internet traffic and Internet calls are local in Pennsylvania, consistent with this Opinion and Order.

³ Any Exceptions and Reply Exceptions must be filed with the Commission's Office of the Secretary by 4:30 PM on the respective due day. The provisions of Section §1.11 shall not enlarge the time for filing the Exceptions or Reply Exceptions in this proceeding. Hard copies and electronic copies, in Microsoft Word® 6.0 format, of the Exceptions and Reply Exceptions shall be served upon each of the Commission's Office of Special Assistants, the Law Bureau, and the Bureau of Fixed Utility Services by the close of business on the dates specified for filing. In consideration of the short deadlines and the November 11, 1998 holiday, parties filing Exceptions shall ensure that copies are served upon all other parties by the close of business on November 10, 1998.

2. That the Commission's Law Bureau place notice in the *Pennsylvania Bulletin* advising the public and interested parties of this generic investigation and soliciting public input. Any Comments and Reply Comments must be filed with the Commission's Office of the Secretary by 4:30 PM on the respective due day, as specified in the notice in the *Pennsylvania Bulletin*. The provisions of 52 Pa. Code §1.11, relating to date of filing, shall not enlarge the time for filing the Comments or Reply Comments in this proceeding. The Comments and Reply Comments shall be filed in hard copy and in electronic copy in Microsoft Word® 6.0 format.

3. That the Commission's Office of Administrative Law Judge provide notice and conduct such proceedings as are necessary to issue a Recommended Decision on the generic issues presented in this investigation no later than November 2, 1998.

4. That November 10, 1998, and November 17, 1998, be the established deadlines for filing Exceptions and Reply Exceptions, respectively, to the Recommended Decision. Any Exceptions and Reply Exceptions, in both hard copy and electronic, Microsoft Word® 6.0, format, must be filed with the Commission's Office of the Secretary by 4:30 PM on the respective due day. The provisions of 52 Pa. Code §1.11, relating to date of filing, shall not enlarge the time for filing the Exceptions or Reply Exceptions in this proceeding. Hard copies and electronic copies, in Microsoft Word® 6.0 format, of the Exceptions and Reply Exceptions shall be served individually upon each of the Commission's Office of Special Assistants, Law Bureau, and Bureau of Fixed Utility Services by the close of business on the dates specified for filing. In consideration of the short deadlines and the November 11, 1998 holiday, parties filing Exceptions shall ensure that copies are served upon all other parties by the close of business on November 10, 1998.

5. That a Joint Recommendation/Public Meeting Report regarding disposition of the Petition, the Recommended Decision, and any Exceptions and Reply

Exceptions be jointly submitted for the Commission's consideration by the Law Bureau, Office of Special Assistants, and Bureau of Fixed Utility Services no later than November 25, 1998.

6. That the Secretary ensure posting at the Commission's website of this generic investigation, including the Commission's August 27, 1998 Motion at this docket, this Opinion and Order, the schedules established by this Commission and the Office of Administrative Law Judge, and all critical documents. The website posting shall make reference to "Internet Investigation -- Docket No. P-00981404."

7. That the Commission's Office of the Secretary file a copy of this Opinion and Order in *Petition for Declaratory Order of TCG Delaware Valley, Inc., for Clarification of Section 5.7.2 of its Interconnection agreement with Bell Atlantic-PA, Inc.*, Docket No. P-00971256, and shall serve a copy on all parties of record to that proceeding who would not otherwise receive a copy as a party to this proceeding. Official notice shall be taken of the proceeding at Docket No. P-00971256, and the record therein shall be incorporated into this proceeding.

BY THE COMMISSION,

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 27, 1998

ORDER ENTERED:

RECEIVED
PUC DOCKET NO. 10082-10:55

17

COMPLAINT AND REQUEST FOR
EXPEDITED RULING OF TIME
WARNER COMMUNICATIONS98 MAR -2 AM 10:55
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

ORDER

This Order grants the petition of Time Warner Communications of Austin, L.P., Time Warner Communications of Houston, L.P., and FIBRcom (collectively, "TW Comm") to require Southwestern Bell Telephone Company ("SWBT") to apply the interconnection agreements' provision requiring reciprocal compensation for the termination of local traffic at specified rates, to the termination of SWBT's customers' calls to Internet Service Providers ("ISPs"). For the period in which such payments have not been made to TW Comm in compliance with this provision, SWBT is further ordered to pay interest at the rate of 5.52%.

In granting the relief sought by TW Comm, the Commission concludes that calls placed to ISPs through the public switched network should be considered "local traffic" for purposes of the reciprocal compensation provision in the interconnection agreements between SWBT and TW Comm. Accordingly, the Commission reverses the portions of the Arbitrator's Award that: (1) characterized the jurisdiction of traffic related to ISP calls as interstate traffic, and (2) concluded that calls to ISPs are not subject to the reciprocal compensation provision applying to the termination of local traffic.

I. Background:

On October 7, 1997, TW Comm filed a complaint against SWBT for the breach of the terms of the SWBT - TW Comm interconnection agreements approved by the Commission. Specifically, TW Comm requested that the Commission immediately direct SWBT to comply with the reciprocal compensation provision in those agreements by paying TW Comm such compensation for its termination of SWBT's customers' calls to ISPs.

The reciprocal compensation provision addressing payments for termination of local traffic is identical in both the first and second interconnection agreements between TW Comm and SWBT.¹ The most relevant portions of the latter agreement for the purposes of this Order are:

5.3 Reciprocal Compensation for Termination of Local Traffic

5.3.1 The Compensation set forth below will apply to all Local Traffic as defined in sub-section 5.1.2 of this Agreement

5.3.2 Applicability of Rates

- i) The rates, terms, and conditions in this Section 5.3 apply only to the termination of Local Traffic, except as explicitly noted.
- ii) The Parties agree to compensate each other for the termination of Local Traffic on a minute of use (MOU) basis.

...

Subsection 1.33 contains the following definition of Local Traffic:

1.33 Local Traffic - Local Traffic, for purposes of intercompany compensation, is if (i) the call originates and terminates in the same SWBT exchange area; or (ii) originates and terminates within different SWBT Exchanges that share a common mandatory local calling area e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes.

SWBT responded to TW Comm's complaint by asserting that the calls made to TW Comm's ISP customers do not represent local traffic, by virtue of the users' predominantly non-local connections through the ISP to the Internet. Consequently, SWBT contended that the reciprocal compensation provision in the interconnection agreements do not apply to such traffic.

¹ *Joint Application of Southwestern Bell Telephone Company and Time Warner for Approval of Interconnection Agreement under PURA 1993 and the Telecommunications Act of 1996, Docket No. 16186 (Oct. 15, 1996); and Joint Application of Time Warner Communications of Austin, L.P., Time Warner Communications of Houston, L.P., FIBRCOM, Incorporated and Southwestern Bell Telephone Company for Approval of Interconnection Agreement under PURA and the Telecommunications Act of 1996, Docket No. 17836 (Nov. 7, 1997).*

FUC DOCKET NO. 18062

Order

Page 3 of 7

This proceeding was conducted under Subtitle Q of the Commission's Procedural Rules, governing post-arbitration disputes. Furthermore, for purpose of hearing and the development of a record on the ISP issue, this docket was consolidated with Docket No. 17922.² In this consolidated proceeding, TW Comm argued: 1) ISP traffic is local traffic and subject to reciprocal compensation; 2) nothing in the interconnection agreements describes an exception to the definition of "local traffic" for ISP calls; and 3) SWBT should reimburse TW Comm for unpaid reciprocal compensation amounts, plus interest. SWBT countered by arguing: 1) the jurisdictional nature of a call is determined by the end-to-end communications; 2) a substantial portion of ISP traffic is interstate; 3) when intrastate and interstate traffic are inextricably mixed, all of the traffic is treated as jurisdictionally interstate; and therefore, 4) the interconnection agreements' reciprocal compensation provision for termination of local traffic is inapplicable.

An arbitration award was issued on January 7, 1998 on the issue of compensation for ISP traffic in both dockets. The Arbitrator concluded that until the FCC determines otherwise, calls to ISPs should be viewed as interstate in nature, and therefore, are not subject to provisions related to local traffic. Based on this ruling, SWBT was not required to pay TW Comm any compensation, either retroactively or prospectively, for the termination of SWBT's customers' calls to ISPs.

II. Disputed Issues:

The federal Telecommunications Act of 1996 § 252(b)(4)³ limits the issues that may be decided in arbitration to those set forth by the parties. This Order resolves the disputed issues presented for arbitration. The Commission affirms the Arbitrator's Award with respect to issues TWC-1, TWC-2, and TWC-13. As a result of the

² *Petition of Walker Creek Communications, Inc. ("WCC") For Arbitration With Southwestern Bell Telephone Company*, Docket No. 17922 (pending). This Order is issued only in Docket No. 18062, and not in Docket No. 17922.

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (FTA).

PUC DOCKET NO. 18082

Order

Page 6 of 7

Commission's decision in this Order, it is not necessary to make specific findings with respect to issues TWC-4, TWC-5, TWC-6, TWC-8, TWC-14, TWC-15, TWC-16, TWC-17, and TWC-18. The Commission reverses the Arbitrator's Award with respect to issues TWC-3, TWC-7, TWC-9, TWC-10, TWC-11, and TWC-12, for the reasons discussed in this Order.

To the extent that "calls" to ISPs are interstate, can such calls be considered "local" for the purpose of reciprocal compensation? (TWC-3) Does a "call" from an end user to an ISP "terminate" at the ISP location? (TWC-7)

The Commission agrees with the FCC's view that the provision of Internet service via the traditional telecommunications network involves multiple components.⁴ One component is the information service – the content – which appears to consist of a significant amount of non-local traffic. The network component, however, is the carrier-to-carrier and carrier-to-end-user telecommunications transmission component, which in the case of a call between two end users in the same local calling area is local traffic.

Therefore, it is the telecommunications service component, rather than the information service component, that constitutes the basis for determining the jurisdiction of the traffic involved in calls to ISPs.⁵ When a transmission path is established between two subscribers in the same mandatory calling area, traffic carried on that path is local traffic, with the telecommunications service component of the call terminating at the ISP location.

⁴ We agree with the Inter Board's determination that Internet seems consist of more than one component. Specifically, we recognize that Internet Access includes a transmission component, which is the connection over a LDC network from a subscriber to an Internet Service Provider, in addition to the underlying information service. "Federal Communications Commission, Report and Order on Universal Service, CC Docket No. 96-45, FCC 97-157 at ¶ 82 (May 8, 1997). Although the FCC has recognized that this position should be reviewed in a future FCC proceeding, its conclusion in the Universal Service Order is the prevailing FCC decision at this time.

⁵ SWB's analysis erroneously combines the telecommunications component and the information component when it applies its end-to-end analysis.

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As previously discussed, SWBT is required to compensate TW Comm under the terms of the reciprocal compensation provision for local calls that terminate to TW Comm customers, including such customers that are ISPs. See also discussion relating to TWC-12.

Is SWBT's refusal to pay reciprocal compensation for calls terminated to TWC customers that happen to be ISPs a violation of TWC and SWBT's interconnection agreement? (TWC-11.)

The Commission finds that SWBT's non-payment of reciprocal compensation for the calls in dispute is a violation of the reciprocal compensation provision in both interconnection agreements.⁶

Does SWBT owe past due amounts to TWC for the transport and termination of ISP traffic? If so, should SWBT pay interest on past due amounts? (TWC-10.)

P.U.C. SUBST. R. 23.45(h) states:

If billings for utility service are found to differ from the utility's lawful rates for the service being purchased by the customer, or if the utility fails to bill the customer for such service, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of the overcharges. If an overcharge is adjusted by the utility within three billing cycles of the bill in error, interest shall not accrue. Unless otherwise provided in this section, if an overcharge is not adjusted by the utility within three billing cycles of the bill in error, interest shall be applied to the amount of the overcharge at the rate set by the commission annually for a calendar year.

On December 1, 1997, the Commission established the interest rate to be applied in calendar year 1998 to overcharges at 5.52% pursuant to P.U.C. SUBST. R. 23.45(h). SWBT shall reimburse TW Comm for the amount owed as a result of this Order, plus 5.52% interest.

⁶ The Commission is troubled by SWBT's unilateral decision to refuse payment of reciprocal compensation. Such conduct, if it recurs, could possibly be found to be a barrier to entry. Now that the Commission has post-interconnection procedural rules, the Commission anticipates that SWBT would make use of those procedures when it believes competitors are misapplying or misinterpreting interconnection agreement provisions. See P.U.C. PROC. R. 22.321-328.

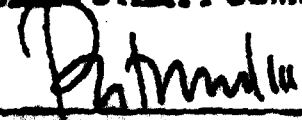
PUC DOCKET NO. 18082

Order

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SIGNED AT AUSTIN, TEXAS the 27th day of February 1998.

PUBLIC UTILITY COMMISSION OF TEXAS


PAT WOOD, III, CHAIRMAN


JUDY WALSE, COMMISSIONER


PATRICIA A. CURRAN, COMMISSIONER

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 24, 1997

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9710401

PETITION OF

COX VIRGINIA TELCOM, Inc.

CASE NO. PUC970069

For enforcement of interconnection
agreement with Bell Atlantic-
Virginia, Inc. and arbitration award
for reciprocal compensation for the
termination of local calls to
Internet service providers

FINAL ORDER

On June 13, 1997, Cox Virginia Telcom, Inc. ("Cox") filed a petition for enforcement of its interconnection agreement with Bell Atlantic-Virginia, Inc. ("BA-VA") and for an arbitration award for reciprocal compensation for the termination of local calls to Internet service providers. Cox requested that the Commission enter an order declaring that local calls to Internet service providers ("ISPs") constitute local traffic under the terms of its agreement and that Cox and BA-VA are entitled to reciprocal compensation for the completion of this type of call.

By Order of August 14, 1997, the Commission directed that a response from BA-VA be filed on or before August 29, 1997, and that a reply be filed by Cox on or before September 15, 1997.

Interested parties were also allowed to submit comments by September 15, 1997. In addition to Cox, replies were filed by TCG Virginia, Inc., Hyperion Telecommunications of Virginia, Inc., AT&T Communications of Virginia, Inc., CFW Network, Inc., R&B Network, Inc., MCImetro Access Transmission Services of Virginia, Inc., MFS Intelenet of Virginia, Inc., WinStar Wireless of Virginia, Inc., and Sprint Communications L.P.

Having considered the response of BA-VA and the replies, the Commission finds that calls to ISPs as described in the Cox petition constitute local traffic under the terms of the agreement between Cox and BA-VA and that the companies are entitled to reciprocal compensation for the termination of this type of call.

Calls that are placed to a local ISP are dialed by using the traditional local-service, seven-digit dialing sequence. Local service provides the termination of such calls at the ISP, and any transmission beyond that point presents a new consideration of service(s) involved. The presence of CLECs does not alter the nature of this traffic.

Accordingly, IT IS THEREFORE ORDERED that:

- (1) The Cox petition is granted.

(2) The termination of local calls to ISPs are subject to the compensation terms of Cox and BA-VA's interconnection agreement.

(3) This matter is dismissed and the papers filed herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Yaron Dori, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004; Carolyn Corona, Legal Assistant, TCG of Virginia, Inc., 2 Lafayette Centre, Suite 400, 1133 21st Street, N.W., Washington, D.C. 20036; Douglas G. Bonner, Esquire, Hyperion Telecommunications of Virginia, Inc., Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116; Wilma R. McCarey, Esquire, AT&T Communications of Virginia, Inc., Room 3-D, 3033 Chain Bridge Road, Oakton, Virginia 22185; Sarah Hopkins Finley, Esquire, MCImetro Access Transmission Services of Virginia, Inc., Williams, Mullen, Christian & Dobbins, P.O. Box 1320, Richmond, Virginia 23218-1320; Michael W. Fleming, Esquire, CFW Network, Inc., R&B Network, Inc., and MFS Intelenet of Virginia, Inc., Swidler & Berlin, 3000 K Street, N.W., Washington, D.C. 20007-5116; Morton J. Posner, Esquire, WinStar Wireless of Virginia, Inc., Swidler and Berlin, 3000 K Street,

N.W., Suite 300, Washington, D.C. 20007-5116; James B. Wright, Esquire, Sprint Mid Atlantic Telecom, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900; Warner F. Brundage, Jr., Esquire, Bell Atlantic-Virginia, Inc., 600 East Main Street, P.O. Box 27241, Richmond, Virginia 23261; Alexander F. Skirpan, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219; Thomas B. Nicholson, Senior Assistant Attorney General, Division of Consumer Counsel, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and the Commission's Division of Communications and Office of General Counsel.

A True Copy
WILLIAM J. BRIDGE
Chair of the
State Corporation Commission



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▼ General Info

Document Name: UT-960323 -- Order Approving Negotiated and Arbitrated Interconnection Agreement

Description: Final Order

▼ Body

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between) DOCKET NO. UT-960323
MFS Communications Company, Inc.) DOCKET NO. UT-960323
And US WEST Communications, Inc.) ORDER APPROVING
Pursuant to 47 USC § 252) NEGOTIATED AND ARBITRATED
.....) INTERCONNECTION
) AGREEMENT

I. INTRODUCTION

A. Procedural History

On February 8, 1996, MFS Communications Company, Inc. ("MFS") requested negotiations with U S WEST Communications, Inc. ("USWC") for interconnection under the terms of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, *codified at* 47 USC § 151 *et seq.* (1996)(the "1996 Act" or "the Act").

On June 24, 1996, MFS timely filed with the Washington Utilities and Transportation Commission ("Commission") and served on USWC, a petition for arbitration pursuant to 47 USC § 252(b)(1). The matter was designated

Docket No. UT-960323. On June 28, 1996, the Commission entered an Order on Arbitration Procedure appointing Simon ffitch as the arbitrator for this proceeding and establishing certain procedural requirements.

USWC filed its response to the petition. Petitions to intervene were filed by AT&T Communications of the Pacific Northwest, Inc. and Telephone Ratepayers Association for Cost Based and Equitable Rates. The petitions were denied in the Arbitrator's Second and Third Procedural Orders respectively.

"Final offer" (or "last best offer") arbitration was adopted for this arbitration pursuant to the Arbitrator's Fourth Procedural Order. In preparing the arbitration report in this matter, the arbitrator selected between the parties' last proposals as to each unresolved issue, selecting the proposal which is most consistent with the requirements of state and federal law and Commission policy. The arbitrator stated he would choose either an entire proposal, or choose between parties' proposals on an issue-by-issue basis. In the event that neither proposal was consistent with law or Commission policy, the arbitrator stated he would render a determination in keeping with those requirements. No party objected to the adoption of "last best offer" arbitration in the Arbitrator's Fourth Procedural Order.

A hearing was held before the arbitrator on September 18 and 19, 1996, at the offices of the Commission in Olympia, Washington. MFS was represented by Douglas Bonner, attorney at law. USWC was represented by Ed Shaw and Lisa Anderl, attorneys at law. Following the hearing, the parties filed final briefs and final offers on October 2 and 8.

On November 8, 1996, the Arbitrator's Report and Decision was issued resolving the disputed issues presented in the final briefs and offers. See *attached*, Appendix A. The parties were instructed to submit an interconnection agreement in accordance with the Arbitrator's Report and Decision within 30 days.

On December 9, 1996, MFS filed a Memorandum Requesting Approval of Arbitrated Interconnection Agreement. On the same date, USWC filed its Request for Approval of Arbitrated Agreement and a Request to Adopt, Modify, and Reject the Interconnection Agreement. Also on December 9, 1996, the parties filed a signed Arbitrated Interconnection Agreement for the State of Washington. Copies of the requests for approval were served on the

Commission's service list for this proceeding to allow for comment by interested persons. Written comments were filed by Telephone Ratepayers Association for Cost-Based and Equitable Rates (TRACER).

The Commission reviewed the proposed Arbitrated Interconnection Agreement, the issues presented by the Arbitration Report and Decision, the parties filings and the record herein.

On January 6, 1997, the Commission held an open meeting at its Main Hearing Room in Olympia, Washington to consider the request for approval of the Arbitrated Interconnection Agreement. Commission staff presented its recommendation that the agreement be approved. Oral comments were made by counsel for MFS, USWC and TRACER. MFS and USWC each asked the Commission to reject certain portions of the agreement and to approve the remainder of the provisions. TRACER opposed approval of the provisions relating to reciprocal compensation.

At the conclusion of the open meeting, the Commission approved all provisions of the Arbitrated Interconnection Agreement as submitted and directed that a written order be prepared.

B. Generic Pricing Proceeding

On October 23, 1996, the Commission entered an order in this and other arbitration dockets declaring that a generic proceeding would be initiated in order to review costing and pricing issues for interconnection, unbundled network elements, transport and termination and resale. Order on Sprint's Petition to Intervene and to Establish Generic Pricing Proceeding (October 23, 1996)("Generic Pricing Order") The Commission stated that rates adopted in the pending arbitrations would be interim rates, pending the completion of the generic proceeding. Accordingly, the price proposals made in this arbitration have been reviewed with the goal of determining which offers a more reasonable interim rate. The conclusions of the arbitrator with respect to price proposals and supporting information are made in this context and do not necessarily indicate Commission approval or rejection of cost and price proposals for purposes of the generic case.

C. The Eighth Circuit Order and the FCC Rules

The FCC rules *In the Matter of the Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8,